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IN THE UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM

UNITED STATES OF AMERICA,) CRIMINAL CASE NO. 08-00004

Plaintiff,

vs.

**UNITED STATES TRIAL MEMORANDUM
ON DELIBERATE IGNORANCE**

EUN YOUNG LEE,
aka Eun Young Cho,
aka Ina Lee,
MARCELINO J. LASERNA,
JOHN W.C. DUENAS,
MARY C. GARCIA,
JOSEPH PANGELINAN,
FRANCISCO SN KAWAMOTO, and
MARGARET B. UNTALAN,

Defendants.

The United States has submitted a jury instruction on deliberate ignorance, which may prove applicable to this case. The Ninth Circuit standard jury instruction 5.7 was based upon United States v. Jewell, 532 F.2d 697 (9th Cir. 1976) (en banc). The court should be aware that a Ninth Circuit decision, United States v. Heredia, 483 F.3d 913 (9th Cir. 2007), decided April 30, 2007, has overruled an extensive body of case law which evolved after the original Jewell decision.

Jewell concerned the scope of the term “knowingly” and expanded its meaning not only to things of which a person had positive knowledge, but to include “the state of mind of one who

1 does not possess positive knowledge only because he consciously avoided it.” Id. at 702. As the
2 years passed, some Ninth circuit opinions added an additional element, that the government also
3 prove the defendant’s motive in deliberately failing to learn the truth about a particular
4 circumstance was to give himself a defense in case he should be charged with a crime. The
5 Heredia court held that the motive prong was not specified in the original Jewell decision, and
6 overruled the cases which had required it. Id. at 920. In addition, the appellate review of the
7 district court’s decision on whether to give the Jewell instruction had been *de novo*. The Heredia
8 court also overruled that line of decisions and held that in the future the district court’s ruling
9 would be reviewed for abuse of discretion. Id. at 922.

10 Heridia concerned a prosecution of a woman who was found with several hundred
11 pounds of marijuana in the trunk of her car. She testified that, given the strong detergent odor in
12 the car, and the way the passenger, her mother, was acting, she did become suspicious that the
13 car contained marijuana, but only after she had passed the last freeway exit before the border
14 checkpoint, and could not stop safely to investigate. The appellate court approved the district
15 court’s Jewell instruction. It held that in “deciding whether to give a willful blindness
16 instruction, in addition to an actual knowledge instruction, the district court must determine
17 whether the jury could rationally find willful blindness even though it has rejected the
18 government’s evidence of actual knowledge. If so, the court may also give a Jewell instruction.”
19 Id. at 922. Given the facts of this case, the jury could have determined that Heridia did not
20 actually know about the drugs in her trunk, but disbelieved her explanation about why she had
21 not investigated the odor sooner, and concluded that she was being willfully blind..

22 In the course of its decision, the Heridia court noted at FN6 that it was not concerned
23 with statutes which set the scienter requirement as having either actual knowledge or reasonable
24 grounds to believe that a fact is true. Willful blindness is knowledge: either a person actually
25 knows something, or he is aware of a “high probability” that a fact is true, and “deliberately
26 avoided learning the truth.”

1 The evidence in this case with show that six of the defendants on trial were all
2 experienced MVD examiners, who could recite the driver's license code virtually *verbatim*.
3 They were charged by law with ensuring that applicants for driver's licenses met all the statutory
4 requirements, yet they repeatedly accepted applications from Ina Lee's "clients" without any
5 review at all. Duplicate addresses, physical descriptions which did not match the applicant,
6 applicants who purportedly were students at UOG but could not speak a word of English,
7 applications unsupported by original documents, all were accepted without question, rubber-
8 stamped and approved without a single question being asked. In short, the evidence will show
9 that these examiners deliberately avoided any inquiry into the credentials of Lee's clients. There
10 was a high probability the applicants at issue were not qualified to receive a license, yet the
11 defendants deliberately avoided learning the truth about them. In such circumstances, a
12 deliberate ignorance instruction is appropriate.

13 Respectfully submitted this 14th day of May, 2008.

14 LEONARDO M. RAPADAS
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16 By: /s/ Karon V. Johnson
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